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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,138	10/12/2000	John J. Sie	19281-000700US	1028
20350	7590	07/22/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			BUI, KIEU OANH T	
		ART UNIT		PAPER NUMBER
		2611		
DATE MAILED: 07/22/2004				

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/687,138	SIE ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
KIEU-OANH T BUI	2611	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b])**

a)  The period for reply expires 3 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

(a)  they raise new issues that would require further consideration and/or search (see NOTE below);

(b)  they raise the issue of new matter (see Note below);

(c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See the attachment.

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). 9.

10.  Other: \_\_\_\_\_.

  
KRISTA BUI  
PATENT EXAMINER

***Response to After Final Arguments***

1. Applicant's arguments filed on 105/1704 have been fully considered but they are not persuasive.

Applicants basically argues that "Ganek does not teach the step of requiring pre-storing a portion of the program, and the viewers of the present invention does not have to wait for the their program to become available", which is incorrect statements about Ganek's system and technique. The examiner would like to invite the Applicants to take a closer look at Ganek once again because Ganek clearly and exactly discloses the same invention as the present application.

First, Ganek's objective is to offer a "video on demand" (VOD) to the viewer based on NVOD structure (see Summary), and the pre-storing of portions or segments of program is performed at the storage buffer as clearly stated in the Office Action. Then, the viewer does not have to wait for the program to begin, because the offset time or the missing time for that part or portion of the program is pre-stored in the buffer and provides the beginning of the program to the viewer immediately on the secondary channel as soon as the user request is detected, i.e., if the program starts on 8:00PM and the user is late 5 minute at 8:05 PM and turns on the TV channel to request that program, the start of that program is being cycling on the secondary channel on channel 106 (example) begins to start right away, and the remaining portion of the same program is configured to complete afterward (col. 7/line 7 to col. 8/line 65); otherwise, the Ganek's system can not be a VOD system, meaning it offers the service right away "per demand" of the user. The present application is doing exactly the same by "storing a segment of the program about equal in length to the stagger time" as making up for the missing time or the missing portion of the program for the same purpose (in claims 1, 10 and 20).

Applicants then goes on to argue that the present application which having “the claims require pre-storing a portion of the program prior to the user request for the program... This allows substantially immediate playback of the program from a NVOD lineup” (in the 2<sup>nd</sup> paragraph, page 7); and then applicants goes on for the issue of “T lead-in” that the users have to wait for “less than a minute”; and then conclude that the users do not wish to wait like that. The Examiner believes that the Applicant’s representative goes off the track and would need to study the Ganek’s reference more carefully as well as the present application because that was NOT about the Ganek’s and again, Ganek discloses exactly what the present application aims to achieve. Within Ganek’s, a better solution for the staggered time is offered (as noted, less than a minute); meanwhile, in the present application, the application offers a much longer staggered time, i.e., a half hour of time and only four channels recycles the program (Fig. 10A, and Specifications, page 21, lines 20-28). It clearly means that if the user is late for 5 minutes as in the above example for a particular program, that user HAS to WAIT for the start of that interested program on the next available channel in 25 minutes!

Therefore, the Examiner totally disagrees with the Applicants’ arguments and stands with the disclosure and teaching of Ganek and Knee as previously disclosed in the Office Action, then already discussed in a revised and detailed Final Office Action, and now clearly discussed again in this Advisory Action.

***Conclusion***

**2. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(703) 872-9306, (for Technology Center 2600 only)**

*Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).*

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krista Kieu-Oanh Bui whose telephone number is (703) 305-0095. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:30 PM, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant, can be reached on (703) 305-4755.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Krista Bui  
Art Unit 2611  
July 21, 2004